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# **Tobacco Amendments**

### 2025 GENERAL SESSION

## STATE OF UTAH

# **Chief Sponsor: Jefferson S. Burton**

LONG TITLE
General Description:
This bill enacts provisions relating to sales of cigars and pipe tobacco.
Highlighted Provisions:
This bill:
<ul> <li>authorizes telephone, mail, Internet, and other remote sales of a cigar or pipe tobacco;</li> </ul>
<ul> <li>provides for the licensing, bonding, and taxation of cigar and pipe tobacco transactions</li> </ul>
between a remote seller and a consumer in the state;
<ul> <li>establishes a criminal penalty for failing to comply with the licensing and bonding</li> </ul>
requirements;
<ul> <li>modifies the tax rate on a cigar; and</li> </ul>
<ul> <li>makes technical and conforming changes.</li> </ul>
Money Appropriated in this Bill:
None
Other Special Clauses:
This bill provides a special effective date.
Utah Code Sections Affected:
AMENDS:
59-14-102, as last amended by Laws of Utah 2022, Chapter 199
59-14-302, as last amended by Laws of Utah 2020, Chapter 347
76-10-105.1, as last amended by Laws of Utah 2021, Chapter 348
ENACTS:
<b>59-14-901</b> , Utah Code Annotated 1953
<b>59-14-902</b> , Utah Code Annotated 1953
<b>59-14-903</b> , Utah Code Annotated 1953
<b>59-14-904</b> , Utah Code Annotated 1953
<b>59-14-905</b> , Utah Code Annotated 1953
<b>59-14-906</b> , Utah Code Annotated 1953

32	Be it enacted by the Legislature of the state of Utah:
33	Section 1. Section <b>59-14-102</b> is amended to read:
34	59-14-102 . Definitions.
35	As used in this chapter:
36	(1) "Alternative nicotine product" means the same as that term is defined in Section
37	76-10-101.
38	(2)(a) "Cigar" means the same as that term is defined in Section 76-10-101.
39	(b) <u>"Cigar" does not include a little cigar.</u>
40	[(2)] (3) "Cigarette" means a roll made wholly or in part of tobacco:
41	(a) regardless of:
42	(i) the size of the roll;
43	(ii) the shape of the roll;
44	(iii) whether the tobacco is flavored, adulterated, or mixed with any other ingredient;
45	or
46	(iv) whether the tobacco is heated or burned; and
47	(b) if the roll has a wrapper or cover that is made of paper or any other substance or
48	material except tobacco.
49	[(3)] (4) "Cigarette rolling machine" means a device or machine that has the capability to
50	produce at least 150 cigarettes in less than 30 minutes.
51	[(4)] (5) "Cigarette rolling machine operator" means a person who:
52	(a)(i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
53	rolling machine; and
54	(ii) makes the cigarette rolling machine available for use by another person to
55	produce a cigarette; or
56	(b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
57	[(5)] (6) "Consumer" means a person that is not required:
58	(a) under Section 59-14-201 to obtain a license under Section 59-14-202;
59	(b) under Section 59-14-301 to obtain a license under Section 59-14-202; [or]
60	(c) to obtain a license under Section 59-14-803[ <del>.</del> ] : or
61	(d) to obtain a license under Section 59-14-903.
62	[ <del>(6)</del> ] <u>(7)</u> "Counterfeit cigarette" means:
63	(a) a cigarette that has a false manufacturing label; or
64	(b) a package of cigarettes bearing a counterfeit tax stamp.
65	[(7)] (8)(a) "Electronic cigarette" means the same as that term is defined in Section

66	76-10-101.
67	(b) "Electronic cigarette" does not include a cigarette or a tobacco product.
68	[(8)] (9) "Electronic cigarette product" means the same as that term is defined in Section
69	76-10-101.
70	[(9)] (10) "Electronic cigarette substance" means the same as that term is defined in Section
71	76-10-101.
72	[(10)] (11) "Importer" means a person that imports into the United States, either directly or
73	indirectly, a finished cigarette for sale or distribution.
74	[(11)] (12) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or
75	any other person doing business as a distributor or retailer of cigarettes on tribal lands
76	located in the state.
77	[(12)] (13) "Little cigar" means a roll for smoking that:
78	(a) is made wholly or in part of tobacco;
79	(b) uses an integrated cellulose acetate filter or other similar filter; and
80	(c) is wrapped in a substance:
81	(i) containing tobacco; and
82	(ii) that is not exclusively natural leaf tobacco.
83	[(13)] (14)(a) Except as provided in Subsection [(13)(b)] (14)(b), "manufacturer" means
84	a person that:
85	(i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or
86	(ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
87	repackages, relabels, or imports an electronic cigarette product or a nicotine
88	product.
89	(b) "Manufacturer" does not include a cigarette rolling machine operator.
90	[(14)] (15) "Moist snuff" means tobacco that:
91	(a) is finely cut, ground, or powdered;
92	(b) has at least 45% moisture content, as determined by the commission by rule made in
93	accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
94	(c) is not intended to be:
95	(i) smoked; or
96	(ii) placed in the nasal cavity; and
97	(d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
98	distributed in single-use units, including:
99	(i) tablets;

100	(ii) lozenges;
101	(iii) strips;
102	(iv) sticks; or
103	(v) packages containing multiple single-use units.
104	[(15)] (16) "Nicotine" means the same as that term is defined in Section 76-10-101.
105	[(16)] (17) "Nicotine product" means the same as that term is defined in Section 76-10-101.
106	[(17)] (18) "Nontherapeutic nicotine device" means the same as that term is defined in
107	Section 76-10-101.
108	[(18)] (19) "Nontherapeutic nicotine device substance" means the same as that term is
109	defined in Section 76-10-101.
110	[(19)] (20) "Nontherapeutic nicotine product" means the same as that term is defined in
111	Section 76-10-101.
112	(21) "Pipe tobacco" means loose leaf tobacco that:
113	(a) is intended to be burned in a pipe; or
114	(b) because of the tobacco's appearance, type, packaging, or labeling, is suitable to be
115	used, and likely to be offered or purchased for use, in a pipe.
116	[(20)] (22) "Prefilled electronic cigarette" means the same as that term is defined in Section
117	76-10-101.
118	[(21)] (23) "Prefilled nontherapeutic nicotine device" means the same as that term is defined
119	in Section 76-10-101.
120	[(22)] (24) "Retailer" means a person that:
121	(a) sells or distributes a cigarette, a cigar, pipe tobacco, an electronic cigarette product,
122	or a nicotine product to a consumer in the state; or
123	(b) intends to sell or distribute a cigarette, <u>a cigar, pipe tobacco,</u> an electronic cigarette
124	product, or a nicotine product to a consumer in the state.
125	[(23)] (25) "Stamp" means the indicia required to be placed on a cigarette package that
126	evidences payment of the tax on cigarettes required by Section 59-14-205.
127	[(24)] (26)(a) "Tobacco product" means a product made of, or containing, tobacco.
128	(b) "Tobacco product" includes:
129	(i) a cigarette produced from a cigarette rolling machine;
130	(ii) a little cigar; or
131	(iii) moist snuff.
132	(c) "Tobacco product" does not include a cigarette.
133	[(25)] (27) "Tribal lands" means land held by the United States in trust for a federally

134	recognized Indian tribe.
135	Section 2. Section <b>59-14-302</b> is amended to read:
136	59-14-302 . Tax basis Rates.
137	(1) As used in this section:
138	(a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
139	product charges after subtracting a discount.
140	(b) "Manufacturer's sales price" includes an original Utah destination freight charge,
141	regardless of:
142	(i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or
143	(ii) who pays the original Utah destination freight charge.
144	(2) [There] Except as provided in Section 59-14-904, there is levied a tax upon the sale, use,
145	or storage of tobacco products in the state.
146	(3)(a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid by
147	the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.
148	(b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling
149	machine shall be paid by the cigarette rolling machine operator.
150	(4) For tobacco products except for moist snuff, a cigar, a little cigar, or a cigarette
151	produced from a cigarette rolling machine, the amount of the tax under this section is .86
152	multiplied by the manufacturer's sales price.
153	(5)(a) Subject to Subsection (5)(b), the tax under this section on moist snuff is imposed:
154	(i) at a rate of \$1.83 per ounce; and
155	(ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.
156	(b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
157	a proportionate amount of the tax described in Subsection (5)(a) is imposed:
158	(i) on that fractional part of one ounce; and
159	(ii) in accordance with rules made by the commission in accordance with Title 63G,
160	Chapter 3, Utah Administrative Rulemaking Act.
161	(6) A cigar is taxed at the lesser of:
162	(a) .86 multiplied by the manufacturer's sales price; or
163	(b) 50 cents per cigar.
164	[(6)] (7)(a) A little cigar is taxed at the same tax rates as a cigarette is taxed under
165	Subsection 59-14-204(2).
166	(b)(i) Subject to Subsection $[(6)(b)(ii)] (7)(b)(ii)$ , a cigarette produced from a
167	cigarette rolling machine is taxed at the same tax rates as a cigarette is taxed under

168	Subsection 59-14-204(2).
169	(ii) A tax under this Subsection $[(6)(b)] (7)(b)$ is imposed on the date the cigarette is
170	produced from the cigarette rolling machine.
171	[(7)] (8)(a) Moisture content of a tobacco product is determined at the time of packaging.
172	(b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:
173	(i) for a period of three years after the last day on which the manufacturer distributes
174	the tobacco product in, or into, Utah, keep valid scientific evidence of the
175	moisture content of the tobacco product available for review by the commission,
176	upon demand; and
177	(ii) provide a document, to the person described in Subsection (3) to whom the
178	manufacturer distributes the tobacco product, that certifies the moisture content of
179	the tobacco product, as verified by the scientific evidence described in Subsection [
180	<del>(7)(b)(i)</del> ] <u>(8)(b)(i)</u> .
181	(c) A manufacturer who fails to comply with the requirements of Subsection $[(7)(b)]$
182	(8)(b) is liable for the nonpayment or underpayment of taxes on the tobacco product
183	by a person who relies, in good faith, on the document described in Subsection [
184	<del>(7)(b)(ii)</del> ] <u>(8)(b)(ii)</u> .
185	(d) A person described in Subsection (3) who is required to pay tax on a tobacco product:
186	(i) shall, for a period of three years after the last day on which the person pays the tax
187	on the tobacco product, keep the document described in Subsection [ <del>(7)(b)(ii)</del> ]
188	(8)(b)(ii) available for review by the commission, upon demand; and
189	(ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
190	to the person's good faith reliance on the document described in Subsection [
191	<del>(7)(b)(ii)</del> ] <u>(8)(b)(ii)</u> .
192	Section 3. Section <b>59-14-901</b> is enacted to read:
193	Part 9. Remote Sales of Cigar and Pipe Tobacco Licensing and Taxation Act
194	<u>59-14-901</u> . Definitions.
195	As used in this part:
196	(1) "Actual cost" means the actual price paid by a retailer.
197	(2) "Actual cost list" means a list, prepared, maintained, and certified annually by each
198	retailer, of the average of the actual cost of each item by stock-keeping unit over the 12
199	calendar months before January 1 of the year in which the remote sale of a cigar or pipe
200	tobacco occurs.
201	(3) "Age verification system" means a service that:

202	(a) is provided by an independent third party; and
203	(b) compares information available from a commercially available database, or an
204	aggregate of available databases, that is used regularly by government agencies and
205	businesses to verify the age and identity of the personal information provided by a
206	consumer during the ordering process.
207	(4)(a) "Remote sale of a cigar or pipe tobacco" means the sale of a cigar or pipe tobacco
208	to a consumer if:
209	(i)(A) the consumer submits the order for the sale by telephone or other method
210	of voice transmission, mail, or the Internet or other online service; or
211	(B) the retailer is not in the physical presence of the consumer when the request
212	for the sale is made; and
213	(ii)(A) the retailer delivers the cigar or pipe tobacco to the consumer by common
214	carrier, private delivery service, or other method of remote delivery; or
215	(B) the retailer is not in the physical presence of the consumer when the consumer
216	obtains possession of the cigar or pipe tobacco.
217	(b) "Remote sale of a cigar or pipe tobacco" does not include a sale by:
218	(i) a regular dealer in those articles in another state to a licensed dealer in this state; or
219	(ii) a wholesaler or distributor in this state to a regular dealer in those articles in
220	another state.
221	(5) "Remote seller" means a retailer that obtains a license in accordance with Section
222	59-14-903 and conducts a remote sale of a cigar or pipe tobacco.
223	Section 4. Section <b>59-14-902</b> is enacted to read:
224	59-14-902 . Authorization for remote sale of a cigar or pipe tobacco.
225	(1) A remote seller may make a remote sale of a cigar or pipe tobacco in this state if the
226	remote seller:
227	(a) complies with the licensing, bonding, and taxation requirements of this part;
228	(b) subject to Subsection (3), collects the sales and use taxes due under Chapter 12,
229	Sales and Use Tax Act;
230	(c) reports to the commission, on an annual basis after remote sales of cigars or pipe
231	tobacco begin:
232	(i) the number of remote sales of cigars or pipe tobacco; and
233	(ii) the gross sales amount;
234	(d) complies with the age and access requirements for cigars or pipe tobacco described
235	in Section 10-8-47 and Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and

### H.B. 245

236	Psychotoxic Chemical Solvents; and
237	(e) uses an age verification system.
238	(2) <u>A remote seller may not:</u>
239	(a) make a sale, other than face-to-face, of any product containing nicotine or tobacco
240	that is not a cigar or pipe tobacco; or
241	(b) make a sale that would be permitted under Section 59-14-201, 59-14-301, or
242	59-14-803, unless the remote seller obtains a separate license.
243	(3) A remote seller shall obtain a sales and use tax license and collect and remit the
244	applicable sales and use tax in accordance with Chapter 12, Sales and Use Tax Act, if
245	the remote seller meets the requirements of Subsection 59-12-107(2).
246	(4) The commission shall establish a mechanism for a person to report a perceived violation
247	of this section.
248	Section 5. Section <b>59-14-903</b> is enacted to read:
249	59-14-903 . License to make a remote sale of a cigar or pipe tobacco.
250	(1) The commission shall issue a license to make a remote sale of a cigar or pipe tobacco to
251	a retailer that submits an application, on a form created by the commission, that includes:
252	(a) the retailer's name;
253	(b) the address of the facility from which the retailer will make a remote sale of a cigar
254	or pipe tobacco;
255	(c) the retailer's federal identification number;
256	(d) proof that the retailer uses an age verification system;
257	(e) proof of receipt of a sales tax license, if applicable; and
258	(f) any other information the commission requires to implement this chapter.
259	(2) <u>A license described in Subsection (1) is:</u>
260	(a) valid for three years;
261	(b) valid only for a single facility from which the retailer makes a remote sale of a cigar
262	or pipe tobacco; and
263	(c) renewable if a licensee meets the criteria for licensing described in Subsection (1).
264	(3) The license required under this section is separate from a valid license a retailer may
265	hold under Section 59-14-201, 59-14-301, or 59-14-803.
266	(4)(a)(i) Except as provided in Subsection (4)(a)(ii), the commission shall require a
267	remote seller that is responsible under this part for collection of tax on a cigar or
268	pipe tobacco to post a bond.
269	(ii) A remote seller that posts a bond under Section 59-14-301 is not required to post

270	an additional bond under this section.
271	(b) The remote seller may post the bond required by Subsection (4)(a) in combination
272	with any bond required by Section 59-14-201 or 59-14-803.
273	(c) Subject to Subsection (4)(d), the commission shall determine the form and the
274	amount of the bond.
275	(d) The minimum amount of the bond shall be:
276	(i) except as provided in Subsection (4)(d)(ii) or (iii), \$500;
277	(ii) if the remote seller posts the bond required by Subsection (4)(a) in combination
278	with a bond required by either Section 59-14-201 or 59-14-803, \$1,000; or
279	(iii) if the remote seller posts the bond required by Subsection (4)(a) in combination
280	with the bonds required by both Sections 59-14-201 and 59-14-803, \$1,500.
281	(5) In addition to other authorized reasons for the commission to deny or revoke a license
282	or a license renewal under this title, the commission may deny or revoke a license to a
283	retailer who makes or wishes to make remote sales if:
284	(a) the retailer violates this title;
285	(b) the retailer does not meet the requirements for licensure;
286	(c) the retailer submits misleading or false information on the retailer's application for
287	licensure; or
288	(d) a retailer has had a license to sell any tobacco or nicotine product revoked by another
289	state.
290	(6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
291	Administrative Rulemaking Act, to establish the additional information described in
292	Subsection (1)(f) that a retailer shall provide in the application.
293	(7) The commission may not charge a fee for a license under this section.
294	Section 6. Section <b>59-14-904</b> is enacted to read:
295	59-14-904 . Taxation of a remote sale of a cigar or pipe tobacco.
296	(1) A tax is imposed on a remote sale of a cigar or pipe tobacco.
297	(2)(a) The amount of the tax imposed under this part on pipe tobacco is .86 multiplied
298	by:
299	(i) the actual cost of the pipe tobacco; or
300	(ii) if the actual cost is unavailable, the actual cost of the pipe tobacco as identified in
301	the actual cost list.
302	(b)(i) Except as provided in Subsection (2)(b)(ii), the amount of tax imposed under
303	this part on a cigar is .86 multiplied by:

304	(A) the actual cost of the cigar; or
305	(B) if the actual cost is unavailable, the actual cost of the cigar as identified in the
306	actual cost list.
307	(ii) The maximum tax is 50 cents per cigar.
308	(c) A remote sale of a cigar or pipe tobacco is not subject to the tax imposed under
309	Section 59-14-302.
310	(3) A remote seller shall collect the tax levied under Subsection (1) from a consumer at the
311	time of a remote sale of a cigar or pipe tobacco.
312	(4) The commission shall deposit the revenue generated by the tax imposed under this
313	section into the General Fund.
314	Section 7. Section <b>59-14-905</b> is enacted to read:
315	59-14-905 . Remittance of tax Returns Invoice required Filing requirement
316	Exception Penalty Overpayment.
317	(1)(a) A remote seller that collects the tax imposed on a cigar or pipe tobacco shall
318	remit to the commission, in an electronic format approved by the commission:
319	(i) the tax collected in the previous calendar quarter; and
320	(ii) the quarterly tax return.
321	(b) The tax collected and the return are due on or before the last day of April, July,
322	October, and January.
323	(2)(a) A remote seller shall provide the consumer with an itemized invoice showing:
324	(i) the remote seller's name and address;
325	(ii) the name and delivery address of the consumer;
326	(iii) the date of sale;
327	(iv) the final cost and quantity for each item by stock keeping unit;
328	(v) the tax due under this part;
329	(vi) the itemized sales and use tax, if applicable; and
330	(vii) shipping charges, if stated separately.
331	(b) The remote seller shall retain a copy of each invoice and make the invoice available
332	for inspection at the request of the commission or the commission's agent for a period
333	of three years following the remote sale of a cigar or pipe tobacco.
334	(c) The remote seller shall retain purchasing records to verify the actual cost or actual
335	cost list value for each item by stock keeping unit.
336	(3)(a) A consumer that purchases an untaxed cigar or pipe tobacco for use or other
337	consumption shall:

338 (i) file with the commission, on a form approved by the commission, a statement 339 showing the quantity and description of the item subject to tax under this part; and 340 (ii) pay the tax imposed by this part on that item. (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax 341 342 due on or before the last day of the month immediately following the month during which the consumer purchased an untaxed cigar or pipe tobacco. 343 344 (c) A consumer shall maintain records necessary to determine the amount of tax the 345 consumer is liable to pay under this part for a period of three years following the date 346 on which the consumer filed the statement required by this section. 347 (4) A tourist who imports an untaxed cigar or pipe tobacco into the state does not need to 348 file the statement described in Subsection (3) or pay the tax if the item is for the tourist's 349 own use or consumption while in this state. 350 (5) In addition to the tax required by this part, a person shall pay a penalty as provided in 351 Section 59-1-401, plus interest at the rate and in the manner provided in Section 352 59-1-402, if a person subject to this section fails to: 353 (a) pay the tax required by this part; 354 (b) pay the tax on time; or 355 (c) file a return required by this part. 356 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in the 357 manner provided in Section 59-1-402. 358 Section 8. Section 59-14-906 is enacted to read: 359 59-14-906. Criminal penalty for making a remote sale without a license or bond. (1) It is unlawful for a person to make a remote sale of a cigar or pipe tobacco without: 360 (a) obtaining a license from the commission under Section 59-14-903; and 361 362 (b) complying with any bonding requirement described in Section 59-14-903. 363 (2) A violation of Subsection (1) is a class B misdemeanor. 364 Section 9. Section **76-10-105.1** is amended to read: 365 76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an 366 electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco 367 specialty shop -- Penalties. 368 (1) As used in this section: 369 (a)(i) "Face-to-face exchange" means a transaction made in person between an 370 individual and a retailer or retailer's employee. 371 (ii) "Face-to-face exchange" does not include a sale through a:

H.B. 245

372	(A) vending machine; or
373	(B) self-service display.
374	(b) "Retailer" means a person who:
375	(i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
376	individual for personal consumption; or
377	(ii) operates a facility with a vending machine that sells a tobacco product, an
378	electronic cigarette product, or a nicotine product.
379	(c) "Self-service display" means a display of a tobacco product, an electronic cigarette
380	product, or a nicotine product to which the public has access without the intervention
381	of a retailer or retailer's employee.
382	(2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an electronic
383	cigarette product, or a nicotine product only in a face-to-face exchange.
384	(3) The face-to-face sale requirement in Subsection (2) does not apply to:
385	(a) a mail-order, telephone, or Internet sale made in compliance with Section 59-14-509
386	or 59-14-902;
387	(b) a sale from a vending machine or self-service display that is located in an area of a
388	retailer's facility:
389	(i) that is distinct and separate from the rest of the facility; and
390	(ii) where the retailer only allows an individual who complies with Subsection (4) to
391	be present; or
392	(c) a sale at a retail tobacco specialty business.
393	(4) An individual who is under 21 years old may not enter or be present at a retail tobacco
394	specialty business unless the individual is:
395	(a) accompanied by a parent or legal guardian; or
396	(b)(i) present at the retail tobacco specialty business solely for the purpose of
397	providing a service to the retail tobacco specialty business, including making a
398	delivery;
399	(ii) monitored by the proprietor of the retail tobacco specialty business or an
400	employee of the retail tobacco specialty business; and
401	(iii) not permitted to make any purchase or conduct any commercial transaction other
402	than the service described in Subsection (4)(b)(i).
403	(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into
404	an area described in Subsection (3)(b) or into a retail tobacco specialty business may not
405	allow the individual to purchase a tobacco product, an electronic cigarette product, or a

406 nicotine product.

- 407 (6) A violation of Subsection (2) or (4) is a:
- 408 (a) class C misdemeanor on the first offense;
- 409 (b) class B misdemeanor on the second offense; and
- 410 (c) class A misdemeanor on any subsequent offenses.
- 411 (7) An individual who violates Subsection (5) is guilty of an offense under Section
- 412 76-10-104.
- 413 Section 10. Effective Date.
- 414 <u>This bill takes effect on July 1, 2025.</u>